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SACHI A. HAMAI
Chief Executive Officer

County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
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February 5, 2016

To: Supervisor Hilda L. Solis, Chair
Supervisor Mark Ridley-Thomas
Supervisor Sheila Kuehl
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: Sachi A. Hamai
Chief Executive Officer

Board of Supervisors
HILDA L. SOLIS
First District

MARK RIDLEY-THOMAS
Second District

SHEILA KUEHL
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

TRAINING AND FIRST SOURCE HIRING PROGRAMS AND LABOR PEACE AGREEMENTS (ITEM NO. 15, AGENDA OF JANUARY 5, 2016)

On January 5, 2016, on motion of Supervisors Hilda L. Solis and Sheila Kuehl, the Board of Supervisors (Board) directed the Chief Executive Officer (CEO) to work with the Internal Services Department (ISD), and the Department of Community and Senior Services (CSS), in consultation with County Counsel and report back in 30 days on the feasibility of:

1. Requiring vendors responding to the Request for Proposals (RFP), for the Hall of Administration (HOA) Cafeteria, to implement a training and first source hiring program;
2. Requiring vendors responding to the Request for Proposals for the HOA Cafeteria to have a Labor Peace Agreement (LPA) in place with labor organizations representing or seeking to represent workers at the premises covered by the RFP; and
3. Within 90 days, report back on the feasibility of extending similar LPA requirements in other types of Los Angeles County (County) solicitations for revenue generating contracts where the County is advancing or preserving its proprietary interests; and if appropriate, recommendations on how to implement this contracting policy.

"To Enrich Lives Through Effective And Caring Service"

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The following represents our report back on item numbers 1 and 2, as listed above. We will report back to the Board on item number 3 in a separate memorandum.

TRAINING AND FIRST SOURCE HIRING PROGRAMS

In the motion, the Board designated CSS with leading the effort to build on existing contracting practices and Board policies that promote worker retention when services continue, but vendors change such that existing workers are deemed non-qualified for job retention, through:

- A. Working with the vendor(s) in “good faith” to assess additional skills needed for non-qualified retention workers;
- B. Identifying an appropriate training program to qualify such workers;
- C. Identifying the resources to fully cover training costs, including Workforce Innovation and Opportunity Act (WIOA) funding; and
- D. Enabling the vendor, once all worker retention goals have been achieved, to identify and prioritize the hiring of candidates that:
 1. Have completed a training program that includes, but is not limited to:
 - A local community college culinary arts program;
 - A local adult school certificate program;
 - A local labor-management partnership, apprenticeship or similar program;
 - A local social enterprise job training program; and
 - A local WIOA approved employment training, apprenticeship and/or credentialed program.
 2. Reside within a five-mile radius of the project or within a County zip code where unemployment exceeds 150 percent of the County’s average unemployment rate.
 3. Have faced significant barriers to employment, including at least two of the following:
 - A veteran;
 - Is emancipated from foster care;
 - Receives public assistance;
 - A custodial single parent;
 - Lacks a GED or high school diploma;

- Has experienced chronic unemployment;
- Homeless or formerly homeless;
- A trainee with less than 15 percent of the hours required to graduate from or advance within a qualified training program, as described above; or
- Has a criminal record or involvement with the criminal justice system.

Hall of Administration Cafeteria - Training and First Source Hiring Program

Based on preliminary discussions with potential bidders, it is anticipated that any vendor participating in the HOA Cafeteria RFP would already have a trained workforce on hand to perform the associated services under the contract. As currently stipulated in the Living Wage requirements, the awarded contractor is required to retain the existing employees currently employed at the HOA Cafeteria, unless an employee: 1) is no longer qualified, 2) has been convicted of a job or performance related crime, or 3) fails to meet a County requirement(s) of the contract or contractor.

Even so, it is likely the awarded contractor would need to replace workers and/or provide additional workers as current food service workers elect to pursue other employment opportunities. As such, and consistent with similar Board policies (e.g., contractor's use of GAIN/GROW participants), it would be feasible to require that a vendor give consideration to eligible candidates who have completed training through the County's workforce development programs and local Americas Job Center of California (AJCC). This could be accomplished by requiring a vendor to coordinate its efforts with the CSS and the Los Angeles County Workforce Development Board, which are responsible for oversight of workforce development programs. The AJCC and associated workforce programs provide priority of service to Veterans, and the homeless and underprivileged populations.

In addition to employment, eligible participants could also receive training through County WIOA funding to prepare them for specific jobs, either as individuals or in partnership through On-the-Job-Training elements in which the County would pay a substantial proportion of training costs. Accordingly, establishing a working relationship between prospective vendors and our workforce system provides a value added opportunity between business and the County that helps support a business viability.

Ultimately, first source hiring and/or training requirements will impose additional costs on the vendor or County, and these additional costs may have to be passed through to the consumers.

The City of Los Angeles maintains a First Source Hiring Program for its Los Angeles International Airport (LAX) vendors in which the vendors must provide the details of any opening(s) to receive one or more applicants for interview. New vendors are not required to hire First Source participants, but must make a "good faith" effort and may hire any "initial hire" candidate after two weeks have passed from the initial notification of the job opening. Existing vendors must wait only five days before hiring outside the referral system.

The targeted population for the LAX First Source program is Temporary Assistance for Needy Families (TANF) clients; the homeless, ex-offenders; the long-term unemployed; and dislocated airport workers. These populations are already the focus of AJCC/WIOA activity.

LABOR PEACE AGREEMENT

A Labor Peace Agreement (LPA) is an arrangement between a union and private employer under which one or both sides agree to waive certain rights under federal law with regard to union organizing and related activity. Although the agreements can be implemented voluntarily, some states and local governments have implemented labor peace ordinances to formalize the practice. Currently, we have found LPAs being used in California cities including the cities of Los Angeles, San Jose, Seaside, Santa Monica, and the City and County of San Francisco (Attachment).

Based on our research, LPAs are primarily used by public agencies when exercising a proprietary interest in connection with construction projects on public property, and have also been used with respect to municipal airport concessions. LPAs covering other types of industries or services are relatively rare and are proscribed by federal law to the extent that they *restrain employer conduct* permitted by the National Labor Relations Act ("NLRA").

The principal argument in favor of LPAs is the avoidance of disruptions from labor disputes, which are fairly common occurrences between the unionized building trades on construction projects, but are rare outside this milieu. To this end, the County has not had any work stoppages, strikes or labor unrest with service contracts/contractor(s) for at least the past ten years.

LPAs generally include "neutrality" clauses imposed by the local agency (as opposed to being negotiated between labor and the vendor(s)) – clauses which require vendors to not hinder collective bargaining activities by, or on behalf of, the vendors' employees. While construction-related LPAs have withstood judicial challenges over the years, other LPAs, such as those related to airport concessions, have not been fully

tested (e.g., LPA imposed upon the vendors at the Los Angeles World Airports (LAWA) is currently being challenged as violative of the NLRA because the agreement requires the vendor to negotiate and enter into a LPA with a labor organization that does not represent the employees of the vendor, regardless of the wishes of its employees).

There is no prohibition to require a LPA as a condition precedent to executing a contract with the County in order to protect the County's proprietary interest in developing and operating cafeteria concession at the HOA. This requirement, however, may limit the number of qualified bidders and may discourage small businesses, non-profits and/or other non-unionized contractors from submitting proposals.

Additionally, there are numerous factors including location, hours of operation and the ability to make a profit operating the cafeteria that results in the County rarely receiving more than a handful of qualified proposals. This additional requirement may reduce competition and negatively impact the number of qualified proposals submitted.

CONCLUSION

Training and First Source Training Program. As previously mentioned, employee retention has not been an issue with existing County service providers or vendors. The current RFP and contract provisions require new vendors to retain existing employees for 90 days, and knowing that new vendors are better served retaining the existing employees instead of hiring and training new employees, it appears the training and First Source Hiring Program may be a good compliment to the existing Living Wage provisions and GAIN/GROW program. However, the cost of the training programs and the funding source(s) are a concern, as well as the potential impact of the costs to the consumers.

Labor Peace Agreement. A LPA is feasible for the Cafeteria, and would be a matter of policy determination for your Board. LPAs can be a positive tool to ensure the private sector provides a livable wage while protecting a government agency's financial interest. However, since the cafeteria RFP is subject to the newly constituted Living Wage Ordinance, a LPA may not provide a wage-related benefit to the small number of food service workers at the HOA Cafeteria. Concurrently, our survey of departments illustrates that the County has not had a history of labor-related issues that have adversely impacted our service contracts. Finally, it appears that a LPA may reduce vendor participation in this solicitation.

Each Supervisor
February 5, 2016
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As per the January 5, 2016 motion, we will report back on the feasibility of including LPAs in other areas of County contracting within 60 days.

SAH:JJ
AC:CA:JA:tlh

Attachment

c: Executive Office, Board of Supervisors
County Counsel
Community and Senior Services
Internal Services Department

HOA.2017425.1
Training and first source hiring programs and LPAs

ATTACHMENT**SUMMARY OF LABOR PEACE AGREEMENTS IN CALIFORNIA**

LOCATION	ORDINANCE/LAW	APPLICATION
Los Angeles, CA	Los Angeles Administrative Code, Division 7, Chapter III, Article IV	Hospitality operations that lease real property from the City
Los Angeles, CA	Board of Airport Commissioners Resolution 24437 from October 15, 2007, Los Angeles World Airports (LAWA)	Concessionaires contracting with Los Angeles World Airports
San Jose, CA	San Jose Code of Ordinances, Title 25, Chapter 25.11	Airport Contracts
San Francisco, CA	San Francisco Administrative Code, Chapter 23, Article IV	Hotels and Restaurants
San Francisco, CA	Rules and Regulations, San Francisco Airport, Rule 12, November 2009	Airport Contracts
Santa Monica, CA	Request for Proposal for Development of the Bergamot Station Arts Center	Hotels, if any hotel project is part of the development
Seaside, CA	Seaside Code of Ordinances, Title 5, Chapter 5.74	Hospitality operations such as hotels, including restaurants, bars, clubs, and food and beverage operations that are located within the hotel or hotel complex



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On February 5, 2016, the CEO provided a report back to the Board on the feasibility of directives one and two (Attachment I). This report addresses the third directive from that motion.

Background

A LPA is an arrangement between a union and private employer under which one or both sides agree to waive certain rights under federal law with regard to union organizing and related activity. LPAs are designed to assure labor stability through, among other things, commitments by unions and their members not to participate in labor activities (e.g., strikes, work stoppages, etc.) over the term of a project or contract so as to avoid disruption in project completion or provision of services.

Although the agreements can be implemented voluntarily, some states and local governments have implemented labor peace ordinances to formalize the practice. As identified in our last report, we found LPAs being used in the cities of Los Angeles, San Jose, Seaside and Santa Monica, and the City and County of San Francisco.

Requiring a LPA as a condition precedent to executing a contract with the County would generally not be prohibited where the County seeks to advance or preserve a proprietary interest, such as management of its property and ensuring that contract performance is not adversely affected by labor disruptions. After consultation with County Counsel, we previously reported that requiring vendors responding to the RFP for the HOA Cafeteria to have a LPA in place with unions is consistent with this and would not be prohibited.

However, to determine whether expanding the LPA requirements to other revenue generating contracts is feasible, ISD conducted a survey to identify the contracts that may fit the definition of a "revenue generating contract." The contracts varied in departments, types of services, and revenue amounts. Due to the variety and complexity of the contracts, it was difficult to identify a clear proprietary interest in each contract to justify a broad policy requiring a LPA.

To ensure proper application, each revenue generating contract would require a case-by-case analysis to determine whether a LPA requirement would advance a clear proprietary interest. Without clearly justifying a proprietary interest to the contract, such a broad policy would likely be found to be preempted by the National Labor Relations Act ("NRLA") as an unlawful attempt to regulate labor relations.

To assist in this case-by-case analysis, County Counsel will be submitting to the Board a separate memorandum outlining legal requirements and issues related to application of LPAs to revenue generating contracts.

Each Supervisor
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Conclusion

Should your Board determine a willingness to move forward with the implementation of a Labor Peace Requirement after it is in receipt of Counsel's memo, a committee will be formed consisting of the Internal Services Department, Parks and Recreation Department, Department of Public Works, Department of Health Services, County Counsel and relevant departments to prepare an implementation strategy.

SAH:JJ
AC:JH:tlh

Attachment

c: Executive Office, Board of Supervisors
 County Counsel
 Community and Senior Services
 Health Services
 Internal Services
 Parks and Recreation
 Public Works